

REMARKS

Claims 1-3 and 5-16 are pending in the subject application. Claims 1-3, 6 and 13-16 are amended herein to more clearly define the claimed subject matter. In particular, claims 1-3 have been amended to recite "or a salt thereof" instead of "or a salt, a solvate or solvate of a salt thereof"; and claims 6 and 13-16 have been amended to recite the composition in combination with "one or more calcium canal blockers, nitrovasodilators, beta blockers, platelet aggregation inhibitors, thrombolytics, anticoagulants, ACE inhibitors, glycoprotein IIb/IIIa receptor antagonists, antiarrhythmics or beta-adrenergic agonists." No new matter has been added by the amendments. Support for the amendments is found throughout the application (see, e.g., Page 16, lines 22-31) and in the claims as originally filed. Applicants respectfully reserve the right to pursue any non-elected, canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

It is submitted that the claims, herewith and as originally presented were in full compliance with the requirements of 35 U.S.C. § 112. The amendment of the claims, as presented herein, is not made for purposes of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, this amendment is made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendment should not give rise to any estoppel.

Reconsideration and withdrawal of the objections to and the rejections of this application in view of the amendments and remarks herewith, is respectfully requested, as the application is in condition for allowance.

Election by Original Presentation

Claims 13-16 stand withdrawn as directed to an invention that is allegedly independent or distinct from the invention originally claimed in that they are drawn to methods of treating acute myocardial infarction using a compound of formula I alone or in combination with one or more medicaments used for the treatment of acute myocardial infarction. Applicants respectfully traverse and request rejoinder.

The combination of the compounds of Formula I with one or more additional active compounds has not previously been found to be a distinct invention (See, original and instant claim 6). Indeed, claims 13-16 are merely method of use claims which are commensurate in scope with the compounds of Formula I as defined in claim 1. Furthermore, a search for a composition or method of use comprising a compound of Formula I would inevitably uncover all combinations which comprise a compound of Formula I, either alone or in combination with a further active ingredient.

Rejoinder of the method of use claims would not place an undue burden on the Examiner. Thus, Applicants respectfully request rejoinder and reconsideration of the withdrawn claims in accordance with M.P.E.P. 821.04 and *In re Ochiai*, 71, F.3d 1565 (Fed. Cir. 1995).

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 1-3 and 5-12 stand rejected as being indefinite as the limitation "solvate" has allegedly indefinite metes and bounds.

Without conceding the validity of the Examiner's rejections, claims 1-3 have been amended to recite "or a salt thereof" instead of "or a salt, a solvate, or solvate of a salt thereof". Support for these amendments can be found throughout the application and claims as originally filed. Applicants respectfully request reconsideration and withdrawal of these rejections.

Claim 6 stands rejected because the term "at least one further active compound" is allegedly unclear. Applicants respectfully disagree. Claim 6 is directed to a pharmaceutical composition, comprising at least one compound of the formula (I) as defined in claim 1 and at least one further active compound. Indeed, the patentability of claim 6 relies on the patentability of the compounds of formula (I) as defined in claim 1. Upon finding the compounds of formula (I) as defined in claim 1 patentable, the compositions comprising them, as in claim 6, would necessarily be patentable regardless of the other active ingredients. Nevertheless, in order to advance

prosecution and without conceding the validity of the Examiner's rejection, claim 6 has been amended to recite "one or more calcium canal blockers, nitrovasodilators, beta blockers, platelet aggregation inhibitors, thrombolytics, anticoagulants, ACE inhibitors, glycoprotein IIb/IIIa receptor antagonists, antiarrhythmics or beta-adrenergic agonists". Support for these amendments can be found throughout the application and claims as originally filed. Applicants respectfully request reconsideration and withdrawal of these rejections.

Rejections under 35 U.S.C. § 112, First Paragraph

Claim 6 stands rejected from allegedly failing to comply with the written description requirement. In particular, the Examiner alleges that the specification fails to teach which active compounds could be combined, at what dosages, the types of formulations for such a combination and modes of administration. Applicants respectfully traverse.

As an initial matter, the dosage, type of formulation, and mode of administration are each of the type of determination that is always made by physicians for every pharmaceutical. Indeed, the determination is a routine one that every physician is prepared to make, and which requires little or no effort.

Furthermore, Claim 6 (and Claims 13-16) has been to recite "one or more calcium canal blockers, nitrovasodilators, beta blockers, platelet aggregation inhibitors, thrombolytics, anticoagulants, ACE inhibitors, glycoprotein IIb/IIIa receptor antagonists, antiarrhythmics or beta-adrenergic agonists."

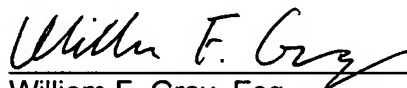
Applicants believe that one of skill in the art would, based on amended claim 6 and the general knowledge of the skilled artisan, would immediately recognize which active agents may be combined with the compounds of the present invention without undue experimentation. As such, Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 1-3 and 5-12 stand rejected as failing to provide enablement for the making of a solvate of a compound of the invention. Without conceding the validity of the Examiner's rejection and solely to expedite the prosecution of the present application, claims 1-3 have been amended to recite "or a salt thereof." Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION


In view of the amendments and remarks made herein, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are respectfully requested. Please charge any required fee or credit any overpayment to Deposit Account No. 04-1105.

Respectfully submitted,



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